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Tech-4-Kids, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

TECH-4-KIDS, INC.,

Plaintiff,

vs.

SPORT DIMENSION, INC.,

Defendant.

CASE NO. 2:12-CV-06769-PA-AJW

**PLAINTIFF TECH-4-KIDS, INC.'S
EVIDENTIARY OBJECTIONS TO
DEFENDANTS' SEPARATE
STATEMENT OF UNDISPUTED
FACTS IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

SPORT DIMENSION, INC.,

Counterclaimant,

vs.

TECH-4-KIDS, INC.,

Counterdefendant.

[Opposition, Separate Statement of
Genuine Issues, Declarations of Michael
Lawrence, Brad Pedersen and Thomas
Neches Filed Concurrently herewith]

DATE: June 3, 2013

TIME: 1:30 p.m.

CTRM: 15

Judge: Honorable Percy Anderson

Pursuant to this Court's Scheduling Order (Dkt. 50), Plaintiff and Counter-Defendant Tech-4-Kids, Inc. ("Tech-4-Kids") hereby submits the following evidentiary objections to Defendants Sport Dimension, Inc. ("Sport Dimension") and Kurt Rios' ("Rios") (collectively, "Defendants") Separate Statement of Undisputed Facts in Support of Defendants' Motion for Summary Judgment.

EVIDENTIARY OBJECTIONS

Separate Statement Paragraph 1: Objection to the initial complaint (Dkt. 1) on the ground that the initial complaint is irrelevant as it is no longer operative in this case. Fed. R. Evid. 401, 402, 403.

Separate Statement Paragraph 2: Objection to the first amended complaint (Dkt. 29) on the ground that the first amended complaint is irrelevant as it is no longer operative in this case. Fed. R. Evid. 401, 402, 403. The date of filing of the first amended complaint is also irrelevant. This case, which was originally filed in the District of Maryland, had been stayed for months pursuant to the parties' agreement. The parties subsequently agreed to transfer the case to this district.

Separate Statement Paragraph 3: The filing date of the second amended complaint is irrelevant to any issue raised in Defendants' motion. Fed. R. Evid. 401, 402, 403. Moreover, although the second amended complaint was entered on March 4, 2013, Tech-4-Kids had moved to amend on January 14, 2013. (Dkt. 56.)

Separate Statement Paragraph 7: Objection to the supporting Declaration of Kurt Rios ("Rios Decl."), paragraph 2 on the ground that Sport Dimension's location and how long it has been in business are irrelevant to any issue raised in Defendants' motion. Fed. R. Evid. 401, 402.

1 Separate Statement Paragraph 10: Objection to the supporting Rios Decl.,
2 paragraph 4 on the ground that the terms “snow related products” and “snow sliders” are
3 vague and ambiguous so that its probative value is substantially outweighed by the
4 danger of unfair prejudice, confusion of the issue, and misleading the court. Fed. R.
5 Evid. 403.

6 Moreover, “snow related products” and “snow sliders” are different from snow
7 bikes which are at issue in this case. Thus whether or not Sport Dimension began selling
8 “snow related products” or “snow sliders” in 2002 is irrelevant to any issue raised in
9 Defendants’ motion. Fed. R. Evid. 401, 402.

10
11 Separate Statement Paragraph 11: Objection to the supporting Rios Decl.,
12 paragraph 5 on the ground that the term “relationships” is vague and ambiguous so that
13 its probative value is substantially outweighed by the danger of unfair prejudice,
14 confusion of the issue, and misleading the court. Fed. R. Evid. 403.

15
16 Separate Statement Paragraph 12: Objection to the supporting Rios Decl.,
17 paragraph 5 on the ground that the term “relationships” is vague and ambiguous so that
18 its probative value is substantially outweighed by the danger of unfair prejudice,
19 confusion of the issue, and misleading the court. Fed. R. Evid. 403.

20
21 Separate Statement Paragraph 13: Objection to the supporting Declaration of
22 Sarah Brooks (“Brooks Decl.”), Exhibit 1 at 14:2-14 on the ground that it is vague and
23 ambiguous so that its probative value is substantially outweighed by the danger of unfair
24 prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 403. Indeed,
25 other Separate Statements proffered by Defendants suggest that Tech-4-Kids has been
26 selling products beyond 5 years. *See e.g.*, Separate Statement No. 30 and 34.

1 Separate Statement Paragraph 16: Objection to the supporting Brooks Decl.,
2 Exhibit 1 at 14:2-14 on the ground that it is vague and ambiguous so that its probative
3 value is substantially outweighed by the danger of unfair prejudice, confusion of the
4 issue, and misleading the court. Fed. R. Evid. 403. Indeed, other Separate Statements
5 proffered by Defendants suggest that Tech-4-Kids has been selling snow bikes since
6 before 2009. *See e.g.*, Separate Statement No. 30 and 34.

7 Moreover, the timing of Tech-4-Kids' formation or that Tech-4-Kids was
8 "established" after Sport Dimension began selling unspecified "snow products" is
9 irrelevant to any issue raised in Defendants' motion. Fed. R. Evid. 401, 402. It is
10 undisputed that Sport Dimension did not begin selling the snow bikes at issue until after
11 it had seen Tech-4-Kids' products and had entered into a distribution agreement with
12 Tech-4-Kids. Defendants' Separate Statement No. 16 mischaracterizes Mr. Pedersen's
13 deposition testimony. Mr. Pedersen's deposition testimony should be considered in its
14 context and entirety. Fed. R. Evid. 106, 901, 1002.

15
16 Separate Statement Paragraph 18: Objection to the supporting Brooks Decl.,
17 Exhibit 2 at 67:9-68:9 on the ground that it lacks foundation and Defendants misstate and
18 mischaracterize Mr. Weenink's deposition testimony. Further Defendants' statement is
19 argumentative such that its probative value is substantially outweighed by the danger of
20 unfair prejudice, confusion of the issue, and misleading the court. Mr. Weenink's
21 deposition testimony should be considered in its context and entirety. Fed. R. Evid. 106,
22 403, 901, 1002.

23
24 Separate Statement Paragraph 19: Objection to the supporting Rios Decl.,
25 paragraph 13 on the grounds that it lacks foundation and is argumentative. Further,
26 Defendants' statement 19 mischaracterizes Mr. Rios's declaration in that he in no way
27 stated that the Yamaha snow bike was intentionally designed to look different from
28 T4K's snow bikes. As such, its probative value is substantially outweighed by the danger

1 of unfair prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 106,
2 403, 602, 701, 901.

3
4 Separate Statement Paragraph 20: Objection to the supporting Rios Decl.,
5 paragraph 13 on the ground that whether or not the Yamaha snow bike is covered by a
6 U.S. patent is irrelevant to any issue raised in Defendants' motion. Fed. R. Evid. 401,
7 402, 403.

8
9 Separate Statement Paragraph 21: Objection to the supporting Brooks Decl.,
10 Exhibit 1 at 271:20-274:24 and Exhibit 24 at 241:18-21 on the grounds that they lack
11 foundation, and Defendants' separate statement is argumentative and misstates and
12 mischaracterizes the cited deposition testimony. The cited deposition testimony should
13 be considered in its context and entirety. Fed. R. Evid. 106, 403, 901, 1002.

14
15 Separate Statement Paragraph 22: Objection to the supporting Brooks Decl.,
16 Exhibit 3 at 126:11-128:3 and Exhibit 24 at 204:7-206:1 on the ground that Consumer
17 Product Safety Improvement Act of 2008 is irrelevant to any issue raised in Defendants'
18 motion. Fed. R. Evid. 401, 402. Statement 22 is also misleading because the Act does
19 not apply to products manufactured before the end of 2008.

20
21 Separate Statement Paragraph 23: Objection to the supporting Brooks Decl.,
22 Exhibit 1 at 14:2-14 on the ground that it is vague and ambiguous so that its probative
23 value is substantially outweighed by the danger of unfair prejudice, confusion of the
24 issue, and misleading the court. Fed. R. Evid. 403.

25
26 Separate Statement Paragraph 24: Objection to the supporting Brooks Decl.,
27 Exhibit 28 on the grounds that it is irrelevant to any issue raised in Defendants' motion, it
28 is argumentative, and Defendants' statement mischaracterizes the evidence such that its

1 probative value is substantially outweighed by the danger of unfair prejudice, confusion
2 of the issue, and misleading the court. The Snow MX, the product that was subject to the
3 voluntary recall, was not “another version of T4K’s snow bike,” as SD concedes in
4 Statement 33, which states that Tech-4-Kids sells three different versions of its snow
5 bikes – the X-Games, Ski-Doo and Polaris. Moreover, Exhibit 28 indicates that although
6 Costco U.S. had decided not to buy Tech-4-Kids’ snow bike products in January 2011,
7 the Snow MX (the product that had been previously recalled) was still under
8 consideration by Costco. Fed. R. Evid. 106, 401, 402, 403, 901, 1002.

9
10 Separate Statement Paragraph 25: Objection to the supporting Brooks Decl.,
11 Exhibits 37 and 39¹ on the grounds that they lack foundation, are argumentative, and
12 Defendants’ statement completely mischaracterizes the evidence such that its probative
13 value is substantially outweighed by the danger of unfair prejudice, confusion of the
14 issue, and misleading the court. Fed. R. Evid. 106, 403, 901, 1002.

15
16 Separate Statement Paragraph 26: Objection to the supporting Brooks Decl.,
17 Exhibit 1 at 306:17-24; Exhibit 2 at 163:11-168:24 on the grounds that they lack
18 foundation and are irrelevant to any issue raised in Defendants’ motion, argumentative,
19 and Defendants’ statement mischaracterizes the testimony such that its probative value is
20 substantially outweighed by the danger of unfair prejudice, confusion of the issue, and
21 misleading the court. Fed. R. Evid. 106, 401, 402, 403, 901, 1002.

22
23 Separate Statement Paragraph 27: Objection to the supporting Brooks Decl.,
24 Exhibit 29 and Exhibit 1 at 313:8-315:19 on the grounds that they lack foundation and
25 are irrelevant to any issue raised in Defendants’ motion, and it is argumentative such that
26

27 ¹ Defendants’ Separate Statement cites Exhibit 41 to the Brooks Decl. which does not exist.
28 Plaintiff believes Defendants intended to cite to Exhibit 39 to the Brooks Decl. to support
Statement No. 25.

1 its probative value is substantially outweighed by the danger of unfair prejudice,
2 confusion of the issue, and misleading the court. Fed. R. Evid. 106, 401, 402, 403, 901,
3 1002.

4
5 Separate Statement Paragraph 32: Objection to the supporting Brooks Decl.,
6 Exhibit 1 at 36:15-22 on the ground that the witness lacks personal knowledge as to what
7 Rios saw. The witness was testifying about Rios' statement that he had seen Plaintiff's
8 product. Defendants' statement misstates and mischaracterizes the testimony such that its
9 probative value is substantially outweighed by the danger of unfair prejudice, confusion
10 of the issue, and misleading the court. Fed. R. Evid. 403, 602.

11
12 Separate Statement Paragraph 40: Objection to the supporting Rios Decl.,
13 paragraph 10 on the ground that it lacks foundation and is vague and ambiguous such that
14 its probative value is substantially outweighed by the danger of unfair prejudice,
15 confusion of the issue, and misleading the court. Rios has no personal knowledge as to
16 whether anyone else at Sport Dimension received confidential information. Moreover,
17 the statement that "such information can be reasonably calculated and obtained based on
18 published prices and publicly available information and displayed product" lacks
19 foundation and is argumentative. Fed. R. Evid. 403, 901.

20
21 Separate Statement Paragraph 42: The cost sheet has additional information not
22 included in Statement 42. Fed. R. Evid. 106.

23
24 Separate Statement Paragraph 48: Objection to the supporting Brooks Decl.,
25 Exhibit 6 on the ground that Defendants' statement misstates and mischaracterizes the
26 document such that its probative value is substantially outweighed by the danger of unfair
27 prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 106, 403, 1002.

1 Separate Statement Paragraph 49: Objection to the supporting Brooks Decl.,
2 Exhibit 6 on the ground that Defendants' statement misstates and mischaracterizes the
3 testimony such that its probative value is substantially outweighed by the danger of unfair
4 prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 403, 1002.

5
6 Separate Statement Paragraph 54: Objection to the supporting Brooks Decl.,
7 Exhibit 23 on the ground that Defendants' statement does not quote Rios' complete
8 communication such that its probative value is substantially outweighed by the danger of
9 unfair prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 106,
10 403.

11
12 Separate Statement Paragraph 55: Objection to the supporting Brooks Decl.,
13 Exhibit 24 at 254:4-21 on the ground that Mr. Rios's belief as to the terms of an
14 agreement in hindsight is irrelevant. *See Founding Members of the Newport Beach*
15 *Country Club v. Newport Beach Country Club, Inc.*, 109 Cal. App. 4th 944, 955 (2003)
16 ("parties' undisclosed intent or understanding is irrelevant to contract interpretation.");
17 Fed. R. Evid. 402, 403.

18
19 Separate Statement Paragraph 57: Objection to the supporting Brooks Decl.,
20 Exhibit 7 on the ground that it lacks foundation, lacks authentication and is hearsay to
21 which no exception applies. Fed. R. Evid. 403, 802, 901.

22
23 Separate Statement Paragraph 58: Objection to the supporting Brooks Decl.,
24 Exhibit 8 on the ground that Defendants' statement misstates and mischaracterizes the
25 document such that its probative value is substantially outweighed by the danger of unfair
26 prejudice, confusion of the issue, and misleading the court. The document also lacks
27 foundation and authentication. Fed. R. Evid. 106, 403, 901.

1 Separate Statement Paragraph 59: Objection to the supporting Brooks Decl.,
2 Exhibit 9 on the ground that it lacks foundation and authentication. Furthermore, the
3 statements made by Mr. Rios are inadmissible hearsay and no exception is applicable.
4 Fed. R. Evid. 403, 802, 901.

5
6 Separate Statement Paragraph 60: Objection to the supporting Brooks Decl.,
7 Exhibit 7 on the ground that it lacks foundation and authentication. Fed. R. Evid. 901.

8
9 Separate Statement Paragraph 61: Objection to the supporting Brooks Decl.,
10 Exhibit 1 at 150:4-14 on the grounds that it misstates and quotes out of context
11 Pedersen's testimony. Fed. R. Evid. 106.

12
13 Separate Statement Paragraph 62: Objection on the grounds that the statement
14 mischaracterizes Exhibit 10 such that its probative value is substantially outweighed by
15 the danger of unfair prejudice, confusion of the issue, and misleading the court. Fed. R.
16 Evid. 403.

17
18 Separate Statement Paragraph 64: Objection to the supporting Brooks Decl.,
19 Exhibit 12 on the grounds that it lacks foundation, lacks authentication, is irrelevant to
20 any issued raised in Defendants' motion, and Defendants' statement misstates and
21 mischaracterizes the testimony such that its probative value is substantially outweighed
22 by the danger of unfair prejudice, confusion of the issue, and misleading the court.
23 Furthermore, statements made by Mr. Rios are inadmissible hearsay and no exception is
24 applicable. Fed. R. Evid. 403, 802, 901.

25
26 Separate Statement Paragraph 65: Objection to the supporting Brooks Decl.,
27 Exhibit 3 at 126:11-128:23 on the grounds that it is irrelevant to any issue raised in
28 Defendants' motion, and the witness is not qualified to provide a legal opinion.

1 Furthermore, Defendants' statement misstates and mischaracterizes the testimony such
2 that its probative value is substantially outweighed by the danger of unfair prejudice,
3 confusion of the issue, and misleading the court. Fed. R. Evid. 401, 402, 403, 702.
4

5 Separate Statement Paragraph 66: Objection to the supporting Brooks Decl.,
6 Exhibit 3 at 128:25-129:15 and Exhibit 24 at 204-205 on the grounds that they lack
7 foundation, lack authentication, are vague and ambiguous and irrelevant to any issue
8 raised in Defendants' motion, and the witness is not qualified to provide a legal opinion.
9 Furthermore, Defendants' statement misstates and mischaracterizes the testimony such
10 that its probative value is substantially outweighed by the danger of unfair prejudice,
11 confusion of the issue, and misleading the court. Fed. R. Evid. 401, 402, 403, 702.
12

13 Separate Statement Paragraph 67: Objection to the supporting Brooks Decl.,
14 Exhibit 12 on the grounds that it lacks foundation, lacks authentication, is irrelevant to
15 any issue raised in Defendants' motion. Furthermore, Defendants' statement misstates
16 and mischaracterizes the testimony such that its probative value is substantially
17 outweighed by the danger of unfair prejudice, confusion of the issue, and misleading the
18 court. Fed. R. Evid. 401, 402, 403.
19

20 Separate Statement Paragraph 68: Objection to the supporting Brooks Decl.,
21 Exhibit 13 on the grounds that it lacks foundation, is inadmissible hearsay and no
22 exception is applicable. Fed. R. Evid. 802, 901.
23

24 Separate Statement Paragraph 69: Objection to the supporting Brooks Decl.,
25 Exhibit 14 on the grounds that it lacks foundation, is inadmissible hearsay and no
26 exception is applicable. Fed. R. Evid. 802, 901.
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1 Separate Statement Paragraph 70: Objection to the supporting Brooks Decl.,
2 Exhibit 15 on the ground that it is inadmissible hearsay and no exception is applicable.
3 Fed. R. Evid. 802.

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5 Separate Statement Paragraph 72: Objection to the supporting Brooks Decl.,
6 Exhibit 16 on the ground that it is inadmissible hearsay and no exception is applicable.
7 Fed. R. Evid. 802.

8
9 Separate Statement Paragraph 74: Objection to the supporting Brooks Decl.,
10 Exhibit 17 on the ground that it is inadmissible hearsay and no exception is applicable.
11 Fed. R. Evid. 802.

12
13 Separate Statement Paragraph 75: Objection to the supporting Brooks Decl.,
14 Exhibit 1 at 288:4-289:6 on the ground that it is vague and ambiguous so that its
15 probative value is substantially outweighed by the danger of unfair prejudice, confusion
16 of the issue, and misleading the court. Defendants' Statement 75 mischaracterizes Mr.
17 Pedersen's deposition testimony. Fed. R. Evid. 106, 403.

18
19 Separate Statement Paragraph 76: Objection to the supporting Brooks Decl.,
20 Exhibit 1 at 289:21-290:5 on the ground that it is vague and ambiguous so that its
21 probative value is substantially outweighed by the danger of unfair prejudice, confusion
22 of the issue, and misleading the court. Defendants' Statement 76 mischaracterizes Mr.
23 Pedersen's deposition testimony. Mr. Pederson's deposition testimony should be
24 considered in its context and entirety. Fed. R. Evid. 106, 403.

25
26 Separate Statement Paragraph 77: Objection to the supporting Brooks Decl.,
27 Exhibit 1 at 123:19-124:3 on the ground that it is vague and ambiguous so that its
28 probative value is substantially outweighed by the danger of unfair prejudice, confusion

1 of the issue, and misleading the court. Defendants' Statement 76 mischaracterizes
2 Pedersen's deposition testimony. Pederson's deposition testimony should be considered
3 in its context and entirety. Duration of the agreement is also irrelevant to the issue of
4 whether the parties had entered into an enforceable agreement. Fed. R. Evid. 106, 402,
5 403.

6
7 Separate Statement Paragraph 78: Objection to the supporting Brooks Decl.,
8 Exhibit 1 at 136:9-12 on the grounds that it is irrelevant and vague and ambiguous so that
9 its probative value is substantially outweighed by the danger of unfair prejudice,
10 confusion of the issue, and misleading the court. Defendants' Separate Statement No. 76
11 mischaracterizes Mr. Pedersen's deposition testimony. Mr. Pederson's deposition
12 testimony should be considered in its context and entirety. The terms for termination are
13 also irrelevant to whether the parties had entered into an enforceable agreement. Fed. R.
14 Evid. 106, 401, 402, 403.

15
16 Separate Statement Paragraph 79: Objection to the supporting Brooks Decl.,
17 Exhibit 1 at 140:9-141:11 on the grounds that it is irrelevant and vague and ambiguous so
18 that its probative value is substantially outweighed by the danger of unfair prejudice,
19 confusion of the issue, and misleading the court. Defendants' Statement 76
20 mischaracterizes Pedersen's deposition testimony. Pederson's deposition testimony
21 should be considered in its context and entirety. Fed. R. Evid. 106, 401, 402, 403.

22
23 Separate Statement Paragraph 84: Objection to the supporting Brooks Decl.,
24 Exhibit 2 at 151:20-152:3, Exhibit 3 at 129:9-130:4, and Declaration of Jim Nelson
25 ("Nelson Decl."), paragraph 3 on the grounds that it is vague and ambiguous, and
26 Defendants' Statement 84 misstates and mischaracterizes the evidence such that its
27 probative value is substantially outweighed by the danger of unfair prejudice, confusion
28 of the issue, and misleading the court. Fed. R. Evid. 106, 403.

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2 Separate Statement Paragraph 86: Objection to the supporting Brooks Decl.,
3 Exhibit 18 on the ground that it lacks foundation. Statement 86 also mischaracterizes the
4 document. Fed. R. Evid. 901, 403.
5

6 Separate Statement Paragraph 87: Objection to the supporting Brooks Decl.,
7 Exhibit 19 on the ground that it lacks foundation and authentication. Fed. R. Evid. 901.
8

9 Separate Statement Paragraph 88: Objection to the supporting Brooks Decl.,
10 Exhibit 19 on the grounds that it lacks foundation. Fed. R. Evid. 901.
11

12 Separate Statement Paragraph 89: Objection to the supporting Brooks Decl.,
13 Exhibit 25 on the ground that it lacks foundation, lacks authentication and constitutes
14 inadmissible hearsay. Fed. R. Evid. 802, 901.
15

16 Separate Statement Paragraph 90: Objection to the supporting Brooks Decl.,
17 Exhibit 20 on the ground that it lacks foundation and authentication. Fed. R. Evid. 901.
18

19 Separate Statement Paragraph 91: Objection to the supporting Brooks Decl.,
20 Exhibit 15 on the ground that it lacks foundation and is inadmissible hearsay. Fed. R.
21 Evid. 802, 901.
22

23 Separate Statement Paragraph 96: The statement misstates the evidence in that it is
24 not a complete summary of the trade secret information identified by Tech-4-Kids. Fed.
25 R. Evid. 403.

26 Separate Statement Paragraph 97: Objection to the supporting Brooks Decl.,
27 Exhibit 3 at 50:14-52:17 and Exhibit 2 at 75:9-77:18 on the grounds that they are vague
28 and ambiguous, and Defendants' Statement 97 misstates and mischaracterizes the

evidence such that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 106, 403.

Separate Statement Paragraph 98: Defendants' Separate Statement No. 98 misstates and mischaracterizes the evidence such that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, and misleading the court. Fed. R. Evid. 403, 802, 1002.

Separate Statement Paragraph 99: Objection to the supporting Brooks Decl., Exhibit 26 on the grounds that it lacks foundation. There is no evidence that the information was provided by Rios. Fed. R. Evid. 901.

Separate Statement Paragraph 104: Objection to the supporting Brooks Decl., Exhibit 1 at 36:18-41:8 on the ground that it is vague and ambiguous so that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, and misleading the court. Defendants' Statement 104 mischaracterizes Pedersen's deposition testimony. Pederson's deposition testimony should be considered in its context and entirety. Fed. R. Evid. 106, 403.

Separate Statement Paragraph 105: Objection to the supporting Brooks Decl., Exhibit 1 at 333:12-16, Exhibit 2 at 20:10-18 and Exhibit 3 at 32:14-18 on the ground that it is vague and ambiguous so that its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issue, and misleading the court. Defendants' Statement 105 mischaracterizes the deposition testimony which should be considered in its context and entirety. Fed. R. Evid. 106, 403.

Separate Statement Paragraph 106: Objection to the supporting Brooks Decl., Exhibit 3 at 28:12-25, 50:23-51:3 on the ground that it is vague and ambiguous so that its

1 probative value is substantially outweighed by the danger of unfair prejudice, confusion
2 of the issue, and misleading the court. Defendants' Statement 106 mischaracterizes the
3 deposition testimony which should be considered in its context and entirety. Moreover,
4 the witness speculates and lacks personal knowledge to the subject matter. Fed. R. Evid.
5 106, 403, 602.

6
7 Separate Statement Paragraph 107: Objection to the supporting Brooks Decl.,
8 Exhibit 3 at 22:7-24":10, 31:12-32:18 on the ground that it is vague and ambiguous so
9 that its probative value is substantially outweighed by the danger of unfair prejudice,
10 confusion of the issue, and misleading the court. Defendants' Separate Statement No.
11 107 mischaracterizes the deposition testimony which should be considered in its context
12 and entirety. Fed. R. Evid. 106, 403.

13
14 Separate Statement Paragraph 109: Objection to the supporting Nelson Decl.,
15 paragraph 8 on the ground that it lacks foundation, and the declarant lacks personal
16 knowledge of the subject matter and provided improper lay witness opinion and legal
17 conclusion. Nelson does not explain his understanding of what constitutes a trade secret
18 nor does he explain who he would know whether Tech-4-Kids' confidential information
19 was used in Sport Dimension's bid to Costco. Fed. R. Evid. 602, 701, 704.

20 Separate Statement Paragraph 110: Objection to the supporting Rios Decl.,
21 paragraph 11 on the ground that on the ground that it is vague and ambiguous such that
22 its probative value is substantially outweighed by the danger of unfair prejudice,
23 confusion of the issue, and misleading the court. Fed. R. Evid. 403.

24
25 Separate Statement Paragraph 111: Objection to the supporting Brooks Decl.,
26 Exhibits 18 and 19 on the ground that they lack foundationThe statement
27 mischaracterizes the exhibit. Fed. R. Evid. 403, 901.

1 Separate Statement Paragraph 113: Objection to the supporting Brooks Decl.,
2 Exhibit 13 on the grounds that it lacks foundation, and is inadmissible hearsay and no
3 exception is applicable. Fed. R. Evid. 802, 901.
4

5 Separate Statement Paragraph 114: Objection to the supporting Brooks Decl.,
6 Exhibit 2 at 142:24-143:1, 151:20-152:6 and Exhibit 3 at 113:16-114:7 on the ground that
7 they are vague and ambiguous so that their probative value is substantially outweighed by
8 the danger of unfair prejudice, confusion of the issue, and misleading the court.
9 Defendants' Statement 114 mischaracterizes the deposition testimony which should be
10 considered in its context and entirety. Fed. R. Evid. 106, 403.
11

12 Separate Statement Paragraph 115: Objection to the supporting Brooks Decl.,
13 Exhibit 1 at 271:20-274:24 on the ground that it is vague and ambiguous so that its
14 probative value is substantially outweighed by the danger of unfair prejudice, confusion
15 of the issue, and misleading the court. Defendants' Statement 115 mischaracterizes the
16 deposition testimony which should be considered in its context and entirety. Fed. R.
17 Evid. 106, 403.
18

19 Separate Statement Paragraph 119: Objection to the supporting Brooks Decl.,
20 Exhibit 40 on the grounds that it lacks foundation, is inadmissible hearsay and no
21 exception is applicable, and the declarant lacks personal knowledge to the subject matter.
22 Fed. R. Evid. 602, 802, 901.
23

24 Separate Statement Paragraph 120: Objection to the supporting Brooks Decl.,
25 Exhibit 1 at 103:15-105:6 on the ground that it is vague and ambiguous so that its
26 probative value is substantially outweighed by the danger of unfair prejudice, confusion
27 of the issue, and misleading the court. Defendants' Statement No. 120 mischaracterizes
28

1 the deposition testimony which should be considered in its context and entirety. Fed. R.
2 Evid. 106, 403.

3
4 Dated: May 13, 2012

GREENBERG TRAURIG, LLP

5 By: /s/ Valerie W. Ho

6 Valerie W. Ho

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11 TECH-4-KIDS, INC.
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